



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. OSHA–2021–0012]

RIN 1218–AD43

Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation; Reopening of Comment Period; Postponement of Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notification of limited reopening of rulemaking record; notification of postponement of public hearing.

SUMMARY: OSHA is reopening the comment period for an additional 60 days to allow for additional public comment on specific topics. Additionally, OSHA is postponing the tentatively scheduled informal public hearing. Before making any decisions about future proceedings, OSHA will review all of the comments on the proposal, including any comments submitted during the reopening of the comment period. Thus, any further decisions about the scheduling of a hearing are in abeyance until that time.

Announcements about any future hearing dates will be published by notice in the *Federal Register*.

DATES: Written comments in response to OSHA's reopening of the comment period must be submitted to Docket No. OSHA–2021–0012 by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

Written comments: You may submit comments and attachments electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the instructions on-line for making electronic submissions.

Instructions: All submissions must include the agency name and docket number for this rulemaking (Docket No. OSHA–2021–0012). All submissions, including any personal information, are placed in the public docket without change and may be available online at www.regulations.gov. Therefore, OSHA cautions you about submitting certain personal information, such as social security numbers and birthdates.

Docket: To read or download comments and materials submitted in response to this *Federal Register* notice, go to Docket No. OSHA–2021–0012 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693-2350 (TTY number: (877) 889-5627).

Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. For example, the full Document ID number for the comment submitted by the Industrial Commission of Arizona (ICA) and the Arizona Division of Occupational Safety and Health (ADOSH), which is discussed in more detail below, is Document ID OSHA–2021–0012–0228. OSHA will identify this comment, and other comments in the rulemaking, by the term “Document ID” followed by the comment’s unique four-digit code.

Electronic copies of this *Federal Register* document are available at www.regulations.gov. This document, as well as news releases and other relevant information, is also available at OSHA’s website at www.osha.gov.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Contact Frank Meilinger, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693-1999; email *meilinger.francis2@dol.gov*.

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693-2200; email: *kalinowski.doug@dol.gov*.

SUPPLEMENTARY INFORMATION: On April 21, 2022, OSHA published a Notice of Proposed Reconsideration and Revocation of Final Approval of the Arizona State Plan for Occupational Safety and Health (Notice) (87 FR 23783). Comments were initially due on May 26, 2022. In response to requests from the public, OSHA extended the comment period to July 5, 2022 (87 FR 31442). OSHA received 197 comments concerning the proposal during the comment period. The April 21, 2022 document tentatively scheduled an informal public hearing on the proposal to begin on August 16, 2022.

I. Additional Information and Request for Comment

On July 5, 2022, the last day of the comment period, the Industrial Commission of Arizona (ICA) and its sub-agency, the Arizona Division of Occupational Safety and Health (ADOSH), submitted a comment on the proposal (Document ID 0228). Therein, the ICA and ADOSH stated that Arizona has completed a number of measures to address the concerns OSHA identified in the proposal. Among other things, ICA and ADOSH stated that:

- Arizona has updated all of its State Plan Application (“SPA”) portal entries to accurately reflect adoption dates for National Emphasis Programs (NEPs) and final rules.
- Arizona is in the final stage of the rulemaking process to adopt the following final rules: Standards Improvement Project Phase-IV (“SIP-IV”); Beryllium in

Construction and Shipyards; and Cranes and Derricks in Construction: Railroad Roadway Work.¹

- The ICA adopted an increase to the minimum penalties for serious and non-serious violations to match OSHA minimums on October 21, 2021.
- On June 23, 2022, the Arizona Legislature passed House Bill (“HB”) 2120, amending A.R.S. § 23-418 to tie the statutory ADOSH maximum penalties (and minimum penalties for willful/repeat violations) to the corresponding OSHA maximum and minimum penalty levels, with annual adjustments for inflation.²
- HB 2120 also amended A.R.S. § 23-414 to authorize adoption of an Emergency Temporary Standard (“ETS”) when either the ICA **OR** OSHA deems the grave danger criteria met.
- Arizona adopted the recordkeeping and COVID-19 log requirements in OSHA’s COVID-19 Healthcare ETS as a permanent standard on February 17, 2022.

(Document ID 0228, pp. 2-3).

Additionally, ICA and ADOSH clarified that Arizona had adopted the two NEPs that OSHA had specifically identified as not yet adopted by the State Plan in the proposal, i.e., the NEP on Amputations in Manufacturing Industries, CPL 03-00-022 (adoption due June 10, 2020), and the NEP on Respirable Crystalline Silica, CPL 03-00-023 (adoption due August 4, 2020) (Document ID 0228, pp. 29-30). As to the NEP on Amputations in Manufacturing Industries, ICA and ADOSH stated that Arizona adopted the updated NEP on April 20, 2022 (Document ID 0228, p. 30). And, as to the NEP on Respirable Crystalline Silica, ICA and ADOSH stated that Arizona did not send the NEP

¹ OSHA’s records reflect that Arizona has now completed this process. Consequently, it has adopted all three of these final rules.

² Arizona’s governor signed H.B. 2120 into law on July 6, 2022 (see <https://apps.azleg.gov/BillStatus/BillOverview/76526>).

implementation documentation to OSHA until April 20, 2022, but actual adoption was accomplished in June 2020 (Document ID 0228, p. 28).

Further, ICA and ADOSH responded to OSHA's concerns regarding Arizona's failure to provide OSHA with the required documentation of adoption of certain measures, as required by statute and regulations. For example, although ICA and ADOSH do not appear to dispute that Arizona failed to timely provide OSHA with documentation of adoption of the NEP on Trenching and Excavation, they asserted that Arizona began conducting inspections under the NEP on Trenching and Excavation as early as May 7, 2019, indicating that the NEP had, in fact, been adopted and implemented shortly after the adoption deadline (Document ID 0228, pp. 29-30). OSHA has reviewed its records alongside ICA and ADOSH's comment and finds that (with one minor exception) all of the ICA and ADOSH assertions described in this Notice are accurate.³

As noted above, ICA and ADOSH submitted their comment on the last day of the comment period. Moreover, as noted above, HB 2120, the bill that addressed issues related to maximum penalties and Arizona's authority to adopt an ETS, was not signed into law until July 6, 2022, the day after the comment period closed. Because the information provided in the ICA and ADOSH comment suggests that Arizona has taken steps to address items that were fundamental to OSHA's decision to propose revocation of Arizona's final approval (87 FR 23785-87), OSHA is reopening the comment period on a limited basis to allow stakeholders to submit additional comments. Specifically, OSHA invites stakeholders to submit comments on the actions referenced in ICA and ADOSH's July 5, 2022, comment and any impact those actions should have on OSHA's proposed revocation of the State Plan's final approval. In particular, stakeholders who previously submitted comments should note in any new comments whether they wish to

³ OSHA's records reflect that Arizona sent documentation of the adoption of the NEP on Respirable Crystalline Silica on May 26, 2022, not April 20, 2022.

revise or withdraw any portion of their previously-submitted comments. Following the reopened comment period, OSHA will consider any supplemental comments received, in addition to comments already received, as it makes decisions regarding future proceedings and whether to finalize its proposal to revoke final approval of the Arizona State Plan.

II. Postponement of Informal Hearing

In its April 21, 2022, publication, OSHA explained that any interested person could request an informal hearing concerning the proposed revocation (87 FR at 23783). OSHA indicated it would hold such a hearing if the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) found that substantial objections had been filed (Id.). To allow for this possibility, the agency tentatively scheduled an informal public hearing on the proposal, beginning August 16, 2022 (Id.).

In light of the reopening of the comment period, OSHA is postponing the public hearing scheduled to begin on August 16. Before making any decisions about future proceedings, OSHA will review all of the comments on the proposal, including any comments submitted during the reopening of the comment period. Thus, any further decisions about the scheduling of a hearing are in abeyance until that time.

Announcements about any future hearing dates will be published by notice in the Federal Register.

III. Public Participation

The Assistant Secretary's decision whether to continue or revoke the Arizona State Plan's final approval will be made after careful consideration of all relevant information presented in this rulemaking (29 CFR 1902.52(a)). To aid the Assistant Secretary in making this decision, OSHA is soliciting public participation in this process. Interested parties are encouraged to submit comments on the actions referenced in ICA's

July 5, 2022, comment and any impact those actions should have on OSHA's proposed revocation of the State Plan's final approval.

Notice in the State of Arizona: Arizona is required to publish reasonable notice of the contents of this *Federal Register* notice within the State no later than 10 days following the date of publication of this notice (29 CFR 1902.49(a)).

Written comments: OSHA invites interested persons to submit written data, views, and comments with respect to the topics identified above. When submitting comments, persons must follow the procedures specified above in the sections titled “**DATES**” and “**ADDRESSES.**” Submissions must clearly identify the issues addressed and the positions taken. Stakeholders that previously submitted comments should note in any new comments whether they wish to revise or withdraw any portion of their previously submitted comments as the agency makes decisions regarding future proceedings and whether to finalize its proposal to revoke the Arizona State Plan's final approval. Comments received by the end of the specified comment period will become part of the record and will be available for public inspection and, where permissible, copying at the OSHA Docket Office, as well as online at www.regulations.gov (Docket Number OSHA-2021-0012).

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC authorized the preparation of this document under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902, 1952, 1953, 1954, and 1955.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

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